BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2021-243-E - ORDER NO. 2021-820

DECEMBER 20, 2021

IN RE: Application of Duke Energy Progress, LLC, for Approval of Rider DSM/EE-13, Increasing Residential and Non-Residential Rates	))))	ORDER GRANTING APPROVAL OF RIDER DSM/EE-13

I. INTRODUCTION

Duke Energy Progress, LLC (DEP) filed an application with the Public Service Commission of South Carolina (Commission) seeking approval of its demand side management (DSM) and energy efficiency (EE) Rider 13. Approval of the rider will allow DEP to recover certain costs associated with its DSM and EE programs DEP offered during the year 2020. DEP seeks approval of the rider in accordance with section 58-37-20 of the South Carolina Code of Laws and with previously issued orders of the Commission, specifically Order No. 2015-596 and Order No. 2021-33. As more fully set forth below, we grant approval of Rider DSM/EE-13.

II. FACTS AND PROCEDURAL HISTORY

DEP filed its Application for approval of Rider 13 on July 30, 2021[1], noting the Commission approved DEP's cost recovery mechanism for the programs in 2015 for the test period of January 1, 2020 through December 31, 2020, and approved a new mechanism

[1] DEP's Application was filed July 30, 2021, at 11:44 a.m. through the Commission's E-Filing System; however, due to a technical issue the Application, along with certain exhibits to the Application, reflect the filing date as August 2, 2021.

for the forecast period of January 1, 2022, through December 31, 2022. (See Order Nos. 2015-596 and 2021-33). The Application stated: "Pursuant to the Mechanisms, the Rider is trued up each year to reflect the difference between the reasonable expenses prudently incurred, net lost revenues incurred, and PPI [Program Performance Incentives] based on realized results during the test period and the revenues that were actually realized during the test period under the DSM/EE Rider then in effect" (Application, p. 4, ¶6). The Application states DEP seeks to recover a total of $19,613,910 from its residential customers and a total of $17,864,027 from its general service customers. (*Id.*, p. 5, ¶7). DEP proposes the following Rider 13 billing factors for 2022:

Rate Class	EE Rate	DSM Rate	Adjustment*	DSM/EE Annual Rider
Residential	0.601	0.217	0.011	0.829
General Service – EE only	0.854		0.004	0.858
General Service – DSM only		0.267	0.002	0.269
Lighting	0.000	0.000	0.000	0.000

** Adjustment includes charges related to Residential Energy Conservation Discount, SC GRT, and Reg Fee.*

(*Id.*)

DEP also asked the Commission to rule on the Application without holding a hearing as set forth in section 58-27-870(F).

After DEP filed its Application and exhibits, the Clerk's Office prepared a notice of the filing and instructed DEP to provide Notice to affected customers via bill insert on or before September 23, 2021. DEP then requested an extension asserting it could not deliver a bill insert in a cost-efficient manner by the original deadline. Therefore, on August 16, 2021, the Clerk's Office prepared a revised notice of filing and a revised transmittal letter. Intervenors had until October 25, 2021, to intervene and DEP was given a deadline of October 11, 2021, to publish the notice in newspapers and via bill inserts or electronic mail.

On August 25, 2021, the Office of Regulatory Staff filed a notice of appearance. Walmart filed a petition to intervene on August 25, 2021, asserting "Electricity is one of the largest operating costs faced by Walmart." (Walmart Petition, p. 2, ¶3). Nucor Steel – South Carolina filed a petition to intervene on September 1, 2021, asserting "[a]s a large industrial customer of DEP, Nucor has a stake in, and may be directly and substantially affected by, the outcome of this proceeding." (Nucor Petition, p. 1, ¶2). On September 23, 2021, the Southern Alliance for Clean Energy (SACE) and the South Carolina Coastal Conservation League (SCCCL) together petitioned to intervene. SACE and SCCCL assert they seek intervention "in order to ensure that their members' interests in promoting energy savings through cost-effective DSM and EE programs are represented. Petitioners are also interested in ensuring that DEP's DSM and EE programs are delivering results, and that the costs and incentives to be recovered via the rider are based on measured and verified energy savings." (SACE/SCCCL Petition, p. 2, ¶5). The Commission's Chief Hearing Officer granted all three petitions to intervene.

On October 15, 2021, ORS filed a detailed, fourteen-page report which reviewed the history of DEP's DSM/EE programs and the Commission's decisions regarding approval of the programs and riders. In its review of this docket, ORS states that "[b]ased on information provided by the Company, the programs appear to be performing well overall. The Company found that, excluding the impact of the DSDR Program, the portfolio achieved 97% of forecasted 2020 energy savings and exceeded the forecasted peak demand reduction by 6% in 2020. The DSDR Program provided an additional system energy savings of 32,097,809 kWh and peak demand savings of 205,053 kW in 2020." (ORS Review of Rider 13, p. 6). ORS also notes:

> For the most part, the programs' avoided energy amounts, avoided capacity amounts, net lost revenues, and PPI [portfolio performance incentive] amounts are estimates that were developed using the DSMore model and the Company's most recent planning data. Thus, nearly all the dollar amounts in the filing, with the exception of the Test Period program costs and the trued-up vintages of certain programs, are estimates. The estimated values and dollar amounts are to be trued-up in future filings, based on EM&V results. ORS is familiar with the DSMore model and finds it to be a reasonable tool for this purpose.

(*Id.*, p. 10).

In its conclusion to its review of Rider 13, ORS states the overall energy savings of all the programs is encouraging. ORS does have concerns with the cost effectiveness of one of the programs, the EnergyWise for Business program. But, overall, ORS recommends approval of Rider 13 noting it will result in an increase of approximately $1.82 for the average residential customer:

> ORS finds that the updated Rider 13 was developed in accordance with the terms and conditions set forth by the Commission and is based on reasonable estimates of participation in the Company's DSM/EE programs. ORS recommends the approval of the following Rider 13 rates as illustrated below in Table 5. Table 5: Rate Recommendations If approved, the change in Rider 13 for an average residential customer using 1,000 kWh per month

> will increase the customer's monthly bill by approximately \$1.82. The Company is requesting the updated rates associated with Rider 13 be effective for bills rendered on and after January 1, 2022.

On October 15, 2021, intervenor Walmart notified the Commission it had reviewed the docket and "has no objection to DEP's proposed changes." Walmart went on to state:

> Walmart also notes that DEP's filing maintains, without change, the 'opt-out' provisions of Rider DSM/EE. Walmart strongly supports DEP's opt-out provisions in light of Walmart's extensive, self-funded energy efficiency ('EE')/demand-side management ('DSM') efforts.

Walmart Letter, dated 10/15/2021.

Also on October 15, 2021, SACE and SCCCL submitted comments to DEP's Application for approval of Rider 13. While SACE and SCCC commended DEP for "proactively adjusting in the face of unprecedented challenges brought on by the COVID-19 pandemic," they also have concerns DEP's energy efficiency savings programs "have not reached the 1% annual savings target agreed to in the Duke Energy-Progress Energy Merger Settlement and the company continues to lag considerable behind DEC." (SACE/SCCCL Comments, p. 2). SACE and SCCCL also note DEP did not provide information related to customers who opted out of programs: "Unfortunately, in contrast to numerous past proceedings, DEP did not provide the figures showing the percentage of retail sales with and without opt out customers. It is clear, however, that opt outs continue to drag down DEP's total efficiency savings, which could otherwise be much higher." (*Id.*, p. 4).[2]

As to DEP's DSM/EE programs, SACE and SCCCL found the programs to be cost-effective:

> **The value of DSM/EE programs continued to be cost-effective and delivered considerable financial value to customers.** In 2020, DEP's DSM/EE portfolio had a Utility Cost Test ("UCT") score of 2.01 and a Total Resource Cost ("TRC") score of 1.65, though both scores were significantly lower than those in 2019. **The total net present value ("NPV") of avoided costs in 2020 was also substantially lower than in previous years, but still amounted to approximately $134 million of financial benefit for customers.**
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> **Table 3. Duke Energy Progress DSM/EE Cost Effectiveness 2017-2020[18]**
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> | Vintage Year | 2017 | 2018 | 2019 | 2020 |
> |---|---|---|---|---|
> | Utility Cost Test (UCT) | 3.87 | 4.15 | 3.01 | 2.01 |
> | Total Resource Cost (TRC) | 2.64 | 3.52 | 2.87 | 1.65 |
> | Net Present Value (NPV) (Million) | $330.2 | $321.1 | $235.8 | $134 |

(*Id.*, footnotes omitted, emphasis added).

SACE and SCCCL also expressed concerns about DEP's ability to meet a 1% savings target for efficiency, especially "in light of recent changes to Duke's DSM/EE Mechanism":

> The central benchmark by which utility efficiency performance is commonly calculated and compared is efficiency savings as a percentage of the previous year's

[2] Order No. 2015-596, issued on August 19, 2015, states of the opt-out provision: "DEP notes that commercial customers with annual consumption of 1,000,000 kWh or greater in the prior calendar year and all industrial customers may elect to not participate in any utility-offered DSM/EE Measures and, after written notification to the utility, will not be subject to the DSM/EE rider." (Order No. 2015-596, pp. 9-10).

> retail sales. But in a departure from previous years, DEP objected to our discovery request to provide its percent annual savings for 2022. In its objection, DEP states that the data request was "not relevant to this EE/DSM cost recovery proceeding, not required or useful to review the Company's proposed cost recovery in this proceeding, and would require the Company to perform new work or analysis." This response raises the question of whether the company intends to work in good faith with Collaborative members to develop plans for reaching 1% annual savings in future years.
>
> Not only does this missing data undermine a useful point of comparison with previous years, it is also problematic for comparing DEP's 2022 forecast to the 1% savings target that has served as the primary benchmark for efficiency in the Carolinas since Duke and Progress Energy merged. Even without the percent annual savings for 2022, it is clear that unless DEP increases savings beyond its current forecast, the Company will continue to fall short of the 1% threshold and the higher performance of its sister company.

(*Id.*, pp. 8-9, footnote omitted). SACE and SCCCL also discussed the cost effectiveness test options in this request for approval of Rider 13 docket:

> [T]he Company has failed to take advantage of Order No. 2021-33 changing the primary cost effectiveness test used in screening program offerings from the Total Resource Cost ("TRC") test to the Utility Cost Test ("UCT"). In discussions at the Collaborative, Duke promoted the notion that this change will help to better value efficiency benefits for inclusion in DEP's DSM/EE portfolio and should help the Company expand its overall efficiency savings. Collaborative members agreed, especially given that the TRC, as previously applied, was asymmetrical and did not account for all benefits. However, despite the Company's representations, changing from the TRC to the UCT does not appear to have increased the availability of cost-effective savings.

(*Id.*, p. 11, footnote omitted).

SACE and SCCCL concluded their comments by expressly stating they support DEP's Application for approval of Rider 13; however, the intervenors recommend several specific actions they see to benefit customers:

> In conclusion, SACE and [SC]CCL support DEP's request for approval of Rider 13, but recommend that DEP pursue higher savings targets, expand its low[-]income programs, and act on recommendations from the Collaborative, to the benefit of all South Carolinians. Specifically we recommend that the Commission: 1) direct DEP to work in good faith with members of the Collaborative to produce a plan for how best to exceed 1% annual savings in each of the next six years, to be periodically updated and presented to the Commission as an appendix to future DEP DSM/EE Rider applications; and 2) direct DEP to increase its low-income efficiency program budgets to at least match those of DEC on a per-residential customer basis, resulting in a floor of $5.4 million annually. We further recommend that DEP expeditiously finalize the evaluation and development of program recommendations proposed by Collaborative members for direct implementation or submission of program applications to the Commission for approval.

(*Id.*, p. 24).

DEP, on October 21, 2021, submitted affidavits of publication of the revised notice and certified it had furnished the revised notice to all its affected customers. On November 15, 2021, DEP filed responsive comments to the other parties, asserting it agrees with ORS's recommendations, but finds the certain comments from the intervening parties went beyond the scope of the current proceeding.

On December 1, 2021, the Commission voted to grant the request of DEP for approval of Rider DSM/EE-13.

III. APPLICABLE LAW

Section 58-37-20 of the South Carolina Code of Laws (2015) establishes the

Commission may encourage utilities "to invest in cost-effective energy efficient technologies and energy conservation programs," and allow utilities to recover certain costs in implementing these programs:

> The South Carolina Public Service Commission may adopt procedures that encourage electrical utilities and public utilities providing gas services subject to the jurisdiction of the commission to invest in cost-effective energy efficient technologies and energy conservation programs. If adopted, these procedures must: provide incentives and cost recovery for energy suppliers and distributors who invest in energy supply and end-use technologies that are cost-effective, environmentally acceptable, and reduce energy consumption or demand; allow energy suppliers and distributors to recover costs and obtain a reasonable rate of return on their investment in qualified demand-side management programs sufficient to make these programs at least as financially attractive as construction of new generating facilities; require the Public Service Commission to establish rates and charges that ensure that the net income of an electrical or gas utility regulated by the commission after implementation of specific cost-effective energy conservation measures is at least as high as the net income would have been if the energy conservation measures had not been implemented. For purposes of this section only, the term "demand-side activity" means a program conducted by an electrical utility or public utility providing gas services for the reduction or more efficient use of energy requirements of the utility or its customers including, but not limited to, utility transmission and distribution system efficiency, customer conservation and efficiency, load management, cogeneration, and renewable energy technologies.

S.C. Code Ann. § 58-37-20.

Two orders of the Commission impact this docket. First, Order No. 2015-596, issued on August 19, 2015, in Docket No. 2015-163-E, approved a cost recovery and incentive mechanism for DEP's DSM and EE programs. The Commission found:

> The provisions of the Application, as supplemented, are just

> and reasonable, and the new Mechanism, as adopted, has benefits for both the Company and customers of all classes, and is consistent with the provisions of S.C. Code Ann. Section 58-37-20 (Supp. 2014). We also note that, under the new plan, the provisions of the Mechanism herein approved may be reviewed by this Commission if necessary at a later time.

(Order No. 2015-596, p. 27). Furthermore, the Commission decided to waive holding a hearing in the 2015 docket:

> Interested parties intervened in the case, and were involved in the discussions leading up to the filing of the Company's supplemental Application provisions, which represented a consensus. No hearing is necessary in this matter, since the parties do not disagree as to what decision should be made in this case.

Secondly, in Order No. 2021-33, issued on January 15, 2021, in the same docket, the Commission approved a revised DSM/EE mechanism. The modification of the mechanism in the 2021 Order[3] was supported by all parties via a settlement agreement. The settling parties in that docket were ORS, DEP, Walmart, Nucor Steel, SCCCL, and SACE, the same parties to the docket at bar. The order states:

> We find that — subject to the modification provided for in the Settlement Agreement referenced above — the Mechanism presented in the Application, including its appendices, as modified by the Settlement Agreement is just and reasonable, and is consistent with S.C. Code Ann. § 58-37- 20. We also find that the Settlement Agreement is a just and reasonable resolution of the matters presented in the Application.

[3] Order No. 2021-33 in Docket No. 2015-163-E.

(Order No. 2021-33, p. 6). Furthermore, Order No. 2021-33 established DEP shall submit proposed changes to the mechanism in 2026: "The Company shall submit to the Commission any proposed changes to the Mechanism for approval concurrently with the Company's annual DSM/EE rider filing in the year 2026." (*Id.*)

While holding a hearing for a docket involving proposed rate changes is normally necessary, the requirement of a hearing is discretionary if the proposed rate changes "do not require a determination of the entire rate structure and overall rate of return." § 58-27-870 (F).

> (A) After a schedule setting forth the proposed changes in its rates or tariffs has been filed with the commission and provided to the Office of Regulatory Staff, the commission must hold a public hearing concerning the lawfulness or reasonableness of the proposed changes.
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> . . .
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> (F) Notwithstanding the provisions of Sections 58-27-860[4] and 58-27-870, the commission may allow rates or tariffs to be put into effect without notice and

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> Whenever an electrical utility desires to put into operation a new rate, it must give not less than thirty days' notice of its intention to file with the commission and the Office of Regulatory Staff and must, after the expiration of the notice period, file with the commission and provide to the Office of Regulatory Staff a schedule setting forth the proposed changes. Copies of the schedule also must be given to other parties as the commission directs. Subject to the provisions of subsections (C) and (D) of Section 58-27-870, the proposed changes may not be put into effect in full or in part

> hearing upon order of the commission when such rates or tariffs do not require a determination of the entire rate structure and overall rate of return, or when the rates or tariffs do not result in any rate increase to the electrical utility, or when the rates or tariffs are for experimental purposes, or when the rates or tariffs so filed are otherwise necessary to obtain an orderly rate administration.

§ 58-27-870 (A), (F).

IV. ANALYSIS

Section 58-37-20 authorizes the Commission to encourage electrical utilities to invest in energy efficient technologies and energy conservation. The statute also authorizes the Commission to allow the utilities to recover their costs and receive a reasonable rate of return on their investment in demand-side management programs. The statute further requires the Commission "to establish rates and charges that ensure that the net income of an electrical or gas utility regulated by the commission after implementation of specific cost-effective energy conservation measures is at least as high as the net income would have been if the energy conservation measures had not been implemented." § 58-37-20.

Pursuant to the law, the Commission issued Order Nos. 2015-596 and 2021-33, approving the cost recovery and incentive mechanism and revised mechanism for DSM/EE programs. The annual DSM/EE rider adjusts the rate to reflect the utility's reasonable expenses incurred, net lost revenues incurred, incentives and the revenues actually realized during the test period under the rider in effect during that time.

> until approved by the commission. Nothing contained in this section affects the existing provisions of Act 1293 of 1966.

§ 58-27-860.

ORS reviewed the Application and recommended the Commission approve Rider 13. ORS noted concerns DEP's non-residential EnergyWise for Business program is not cost effective, however. The intervenors also supported DEP's request for approval of Rider 13, although SACE and SCCCL recommend DEP move to exceed 1% annual savings and increase its DSM/EE programs. SACE and SCCCL filed comments providing views on various components of the DEP's DSM/EE program in their support of DEP's request for approval of Rider 13.

V. FINDINGS OF FACT

After review of all evidence in the record, the Commission makes the following findings of fact:

1. The proposed DEP DSM/EE Rider 13 is reasonable and appropriate pursuant to South Carolina law and applicable Commission orders.

2. ORS recommended approval of DEP's DSM/EE Rider 13 after extensive review.

3. The intervenors, including Walmart, SACE, and SCCCL also recommended approval of the Rider, although the parties expressed concerns and comments regarding DEP's DSM/EE programs.

4. As part of their support, the comments of SACE and SCCCL offered views on various components of DEP's DSM/EE programs. We find that SACE/CCL's recommendations go beyond the scope of this EE/DSM cost recovery rider proceeding. As directed in Order No. 2021-514, Docket No. 2021-76-E, we believe that SACE/CCL's recommendations and feedback are best addressed within the EE/DSM Collaborative.

5. No party opposed DEP's request that the Commission review the Application without a hearing.

VI. CONCLUSIONS OF LAW

1. The Demand-side Management and Energy Efficiency Rider 13, as set forth in the Application of Duke Energy Progress, LLC, in this docket, is just and reasonable and is hereby approved pursuant to the authority of the Commission in section 58-37-20 of the South Carolina Code of Laws (2015) and Commission Order Nos. 2015-596 and 2021-33.

2. Pursuant to section 58-27-870(F), the Commission grants the request of DEP to allow the rates set forth in Rider 13 to be put into effect without a hearing because the rates do not require a determination of the entire rate structure and overall rate of return, as such has been established in Commission orders.

VII. ORDERING PROVISIONS

IT IS THEREFORE ORDERED:

1. Rider DSM/EE 13 of Duke Energy Progress, LLC is approved. DSM/EE Rider 13 shall remain in effect from January 1, 2022, to December 31, 2022, or until further order of the Commission.

2. The rates contained in Rider 13 of 0.829 cents per kWh for residential customers and 1.127 cents per kWh for non-residential customers are approved for the billing period January 1, 2022, to December 31, 2022.

3. DEP shall file its tariff for the approved rates on or before December 30, 2021, using the Commission's E-Tariff filing system. The tariff shall be consistent with

the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

4. DEP shall monitor its non-residential EnergyWise for Business program and seek program enhancements to improve its cost effectiveness.

5. SACE/CCL and any other parties may continue discussions of issues affecting DSM/EE programs within the Collaborative structure as needed.

6. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

Justin T. Williams, Chairman
Public Service Commission of
South Carolina